UNITED TEA, RUBBER AND LOCAL PRODUCE WORKERS' UNION
v.
HAYCARB LIMITED AND ANOTHER

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
RAMANATHAN, J. AND
PERERA, J.
S.C. APPEAL NO. 59/96.
HIGH COURT (REVISION)
APPLICATION NO. 45/95 – 125/95.
L.T. NO. 21/1138/94 - 21/1227/94.
MAY 30, 1997.

Industrial Disputes – Application to the Labour Tribunal – Section 31B of the Industrial Disputes Act – Joint application by a Trade Union on behalf of 94 workmen – Validity of the application – Section 2 (mm) of the Interpretation Ordinance.

The appellant trade union applied to the Labour Tribunal in terms of section 31B of the Industrial Disputes Act for relief on behalf of 94 workmen in respect of the termination of their services. This application was made within the time prescribed by section 31B (7) of the Act. Thereafter, on a directive sent by the Assistant Secretary of the Labour Tribunal, the appellant submitted separate applications on behalf of each workman. At the inquiry before the Labour Tribunal the employer objected to the second set of applications on the ground that they were time-barred. The President of the Labour Tribunal overruled the objection holding that the original application had been filed within time and contained all the names of workmen and the details necessary for making a determination on the relief sought.

Held:

Even though form D provided by regulation 15 of the Industrial Disputes Regulations relating to applications to the Labour Tribunal made under the Industrial Disputes Act refers to the "applicant" and "employer", there is no prohibition against a joint application by more than one workman in terms of section 31B of the Industrial Disputes Act or regulation 15 of the Industrial Disputes Regulations, having regard to the provisions of section 2 (mm) of the Interpretation Ordinance which provides that in every written law, unless there is something repugnant in the subject or context, "words in the singular number shall include the plural and *vice versa*".

APPEAL from judgment of the Provincial High Court of Chilaw.

E. D. Wickremanayake with *Ms. Anandi Cooray* and *U. Abdul Najeem* for appellant.

Gomin Dayasiri for 1st and 2nd respondents.

Cur. adv. vult.

July 28, 1997.

PERERA, J.

The applicant-respondent-petitioner (hereinafter referred to as the appellant) filed an application dated 13.1.94 against the respondent-petitioner-respondent (hereinafter referred to as the respondent) in the Labour Tribunal (Negombo) holden at Chilaw on behalf of 94 workmen who were members of the appellant Trade Union complaining that the services of these workmen had been wrongfully terminated by the respondent with effect from 7.8.93 (**P1**)

By letter dated 24.1.94, the Assistant Secretary of the Labour Tribunal, Negombo informed the appellant to forward separate applications in duplicate on behalf of each workman referred to in the aforesaid application and further that if this procedure is not complied with, no relief would be granted by the Labour Tribunal. (Vide **P2**)

The appellant then filed 94 separate applications dated 7.2.94 on behalf of each individual workman in accordance with the instructions set out in the letter P2. (**P3**)

When this matter was taken up for inquiry in the Labour Tribunal the respondent raised a preliminary objection on the ground that the said applications had been filed out of time. The Labour Tribunal having considered the written submissions filed by both parties, made Order over-ruling the preliminary objection and held that the original application dated 13.1.94 had been filed within the time prescribed by law, as it contained all the names of the workmen and the necessary details which were necessary for making a determination on the relief sought in the case. The Order of the Learned President is marked **P4**.

The respondent then filed an application in the Provincial High Court of Chilaw seeking its revisionary jurisdiction to revise the said Order of the Learned President. (Vide **P5**)

It was the contention of the respondent that the applications filed by the appellant on 7.2.94 were prescribed by law as they were not filed within six months of the date of termination of the services of the workmen as required by section 31(B) (7) of the Industrial Disputes Act (Cap 152). (Vide **P9**)

The Learned High Court Judge in his Order dated 19.2.96 upheld the preliminary objection taken by the respondent in the Labour Tribunal that the said applications were time-barred and set aside the Order of the Labour Tribunal acting in revisions.

The appellant then sought special leave to appeal from this Court against the aforesaid Order of the High Court. Special leave to appeal was granted to the appellant on 4.6.96.

At the argument of the present appeal, the only issue which arose for determination was this question whether the separate individual applications made by the appellant dated 7.2.94 were referable to the original single application dated 13.1.94 made by the appellant for the purpose of computing the prescriptive period.

On this matter, it was the submission of Counsel for the appellant that the original application made by the appellant to the Labour Tribunal dated 13.1.94 (P1) had been filed within the period of six months prescribed by law and therefore should be considered and accepted as an application duly made to the Labour Tribunal. Counsel contended that the said application was in conformity with the provisions of the Industrial Disputes Act and the regulations made thereunder. The second set of applications dated 7.2.94 filed by the appellant was merely a response to information conveyed to him by the Assistant Secretary of the Labour Tribunal by letter dated 24.1.94. (P2). In the aforesaid circumstances, Counsel argued that the individual applications dated 7.2.94 were indeed referable to the

original application dated 13.1.94 and received by the Labour Tribunal on 24.1.94. It was common ground that the original application had been filed within the time prescribed by law. Counsel urged that the Learned High Court Judge was therefore in error when he held that the applications of the appellant made to the Labour Tribunal on 7.2.94 were not in conformity with the provisions of section 31(B) (7) of the Industrial Disputes Act and was thus time-barred.

It was however the contention of Counsel for the respondent that on or about 1.7.93 the workmen represented by the appellant who were at the time material to this appeal in the employment of the respondent went on strike over a labour dispute. This matter was referred to compulsory arbitration under section 4(1) of the Industrial Disputes Act. Consequent upon the said reference to arbitration, the respondent addressed a letter dated 4.8.93 to the workmen informing them that the continuance of the strike when the dispute had been referred for arbitration was illegal, and that they would be deemed to have vacated post if they did not report for work on or before 6.8.93. Despite and without heeding the aforesaid warning, the workmen failed to report for work even as at 6.8.93. The respondent then addressed a further letter dated 7.8.93 to the workmen stating, *inter alia*, as follows:–

> "... we are confirming that your name has been taken off our register of workers effective from 6.8.93."

At this stage, the appellant Union acting on behalf of its members who were thus affected, filed a single application in respect of all the workmen in the Labour Tribunal, Negombo (holden at Chilaw) against the respondent. The Assistant Secretary of the Labour Tribunal then addressed the letter P2, the contents of which have been set out in the earlier part of the judgment to the appellant Union. The appellant then filed separate applications on behalf of each individual workman on 7.2.94. Counsel contended that having regard to the facts set out above, the separate individual applications date 7.2.94 were not referable to the original single application dated 13.1.94 made to the Labour Tribunal for the purpose of computing the prescriptive period.

In support of this proposition, Counsel for the respondent made the following submissions:-

(a) The original consolidated application dated 13.1.94 was not a valid application and could not be construed as an application properly made in respect of the several workmen.

(b) In terms of the Industrial Disputes Act and the Industrial Disputes Regulations, an application can be made by a workman or a trade union of a workman on his behalf.

(c) It is not permissible under the provisions of the Industrial Disputes Act for several workmen to file a joint application or a trade union to file a single application in respect of more than one workman.

(d) Counsel laid much emphasis on the fact that the Assistant Secretary addressed a letter to the Appellant Union (P2) informing that the application was not in the prescribed form.

(e) An application to a Labour Tribunal has to be made substantially in terms of Form D as set out in Regulation 15 of the Industrial Disputes Regulations. The format of Form D support the proposition that an application cannot be made by or in respect of more than one workman, and

(f) That a purported invalid application cannot be converted into a valid application.

Having regard to the matters set out above, Counsel contended strongly that the original single application (P1) though it was filed within the time prescribed by law, was an invalid application while the separate applications filed on 7.2.94 were in accordance with the form prescribed by law, but had been made out of time. Counsel submitted that there was no nexus between the original application and the subsequent set of applications, but he conceded that in the case of both applications, the parties to the dispute

and the nature of the dispute were identical. Counsel therefore contended that the separate applications filed on 7.2.94 **filed one day after the six months' period had lapsed were time-barred.** The Labour Tribunal could not have therefore entertained them in view of the provisions of section 31(B) (7) of the Industrial Disputes Act.

The vital questions therefore which emerge for determination in the present Appeal are as follows:–

(a) Was the application made by the appellant to the Labour Tribunal dated 13.1.94 a valid application?

(b) Are the separate individual applications made by the appellant to the Labour Tribunal dated 7.2.94 referable to the original application dated 13.1.94 for the purpose of computing the prescriptive period?

Section 31(B) of the Industrial Disputes Act sets out in limbs (a) – (d) the matters in respect of which a Labour Tribunal has jurisdiction. Under this section, a direct application for relief or redress could be made to a Labour Tribunal by a workman or a trade union on his behalf. Further section 31(A) (2) provides for regulations to be made prescribing the manner in which applications under section 31(B) may be made to the Labour Tribunal. In terms of Regulation 15 of the Industrial Disputes Regulations made thereunder every application under section 31(B) shall be substantially in Form D set out in the 1st schedule and shall be sent to the secretary in duplicate.

On an examination of Form D, it is quite clear that an application will be in order if it contains the following particulars:–

(a) Names and addresses of the parties,

(b) Facts and matters in dispute, and

(c) the relief claimed.

It is common ground in the present case that the parties to both applications dated 13.1.94 and 7.2.94, the matters in dispute and the relief claimed were identical. The main ground upon which Counsel for the respondent objected to the reception of the original application was on the basis that it was a joint application made by the appellant Union on behalf of several workmen which was contrary to the accepted practice that an application to a Labour Tribunal can only be made in respect of an individual workman – a practice which has been observed over the years. Counsel also urged that the format of Form D supported this proposition in that the said Form made reference to "applicant" and "employer" in the singular.

I regret that I am unable to agree with this view, particularly having regard to the provisions of section 2(mm) of the Interpretation Ordinance (Cap. 12) which provides that in every written law, unless there be something repugnant in the subject or context, "words in the singular number shall include the plural and *vice versa*."

It is also significant that there is no express provision contained in the Industrial Disputes Act or in the regulations made thereunder which debars the Labour Tribunal from entertaining an application made by more than one workman if such application is otherwise in conformity with section 31(B) and Regulation 15 of the Industrial Disputes Regulations 1958.

I therefore affirm the decision of the Learned President of the Labour Tribunal who rightly dismissed the preliminary objection raised by the respondent and held that the original application made to the Labour Tribunal dated 13.1.94 by the Appellant Union was in due form and in accord within the provisions of section 31(B) of the Industrial Disputes Act.

Having regard to my findings set out above, the second matter for determination whether the separate individual applications made by the appellant on 7.2.94 are referable to the original application would not therefore arise.

I accordingly set aside the Order of the High Court dated 19.2.96 and direct that this matter be remitted to the Labour Tribunal for adjudication on its merits.

Before I part with this judgment however, I have to make the firm observation that the salutary practice adopted in the Labour Tribunal to entertain separate applications for relief in respect of each workman, should not be deviated from, except in the most exceptional circumstances.

The Appeal is allowed without costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.